

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:19-cv-00064-MR
CRIMINAL CASE NO. 1:07-cr-00033-MR-WCM-3**

JEANNIE LARGENT COSBY,

Petitioner,

VS.

**JODY UPTON, Warden FMC
Carswell,**

Respondent.

ORDER

THIS MATTER is before the Court on its May 6, 2019, Order requiring Petitioner to pay the filing fee or file an application to proceed *in forma pauperis* [Doc. 4] and *pro se* Petitioner's Letter [Doc. 5], which the Court construes as a motion for immediate release.

Petitioner filed a “Motion for the Award of Good Time Under 28 USC Section 2241” on February 20, 2019. [Doc. 1]. Petitioner did not pay the \$5.00 filing fee or file a motion to proceed *in forma pauperis*. The Clerk of Court mailed Petitioner a Notice of Deficiency on March 6, 2019, instructing her to pay the fee or return the *in forma pauperis* application within 21 days. [Doc. 2]. Petitioner thereafter filed an Application to proceed *in forma pauperis*. [Doc. 3]. On May 6, 2019, the Court denied Petitioner’s

Application upon determining that Petitioner had adequate resources to pay the \$5.00 filing fee. [Doc. 4]. The Court instructed Petitioner to pay the required filing fee within thirty (30) days and warned Petitioner that failing to pay the required fee within the time required would result in this case's dismissal without prejudice. [Id.].

Petitioner has not paid the \$5.00 filing fee and the time to do so has now expired. Therefore, the case will be dismissed without prejudice for failing to comply with a court order. See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); Link v. Wabash R.R. Co., 370 U.S. 626, 631-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, a district court has the inherent power to dismiss a case for lack of prosecution or violation of a court order); see also Robinson v. North Carolina, 764 Fed. Appx. 339 (4th Cir. 2019) (affirming the dismissal without prejudice of a § 2241 petition for failure to comply with an order).

Petitioner's Letter [Doc. 5], in which she seeks immediate release from prison, is construed as a Motion and is denied as moot in light of this case's dismissal.¹

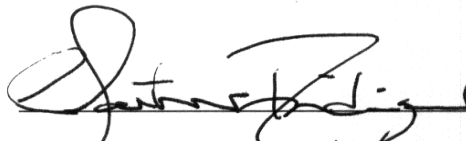
IT IS, THEREFORE, ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** for Petitioner's failure to comply with this Court's Order entered May 6, 2019.


IT IS FURTHER ORDERED that Petitioner's Letter [Doc. 5], which is construed as a motion for immediate release, is **DENIED AS MOOT**.

The Clerk of this Court is directed to terminate this action.

IT IS SO ORDERED.

Signed: June 24, 2019


Martin Reidinger
United States District Judge



¹ The Court notes that Petitioner's expected release date is on June 24, 2019. [See Doc. 5].